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PATENT

#27

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
Story, et al.)
Application No: 09/222,336)
Filed: December 28, 1998)
For: LICENSE MANAGEMENT FOR DIGITAL)
CONTENT)

Examiner: Y. Retta

Art Unit: 2162

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Applicant (hereafter "Appellant") hereby submits this Brief in triplicate in support of its appeal from a final decision by the Examiner in the above-referenced case. Appellant respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.

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I. REAL PARTY IN INTEREST

The present U.S. Patent application is assigned to Audible, Inc. of 65 Willowbrook Boulevard, Wyane, New Jersey 07470.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal which will directly affect, be directly affected by, or have a bearing on the Board's decision.

III. STATUS OF THE CLAIMS

Claims 1-8, 10-18 and 20-30 are pending in the present application. Claims 9, 19 and 19 have been canceled during prosecution. Claims 1-8, 10-18 and 20-30 were rejected in the Final Office Action mailed February 25, 2002 and are the subject of this After Final Response.

Claims 1-8, 10-18 and 20-30 were rejected as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Claims 1-8, 10-18 and 20-30 were also rejected as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claims 1-8, 10-18 and 20-30 were rejected under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 5,969,283 issued to Looney, et al. (*Looney*). Claims 3, 13, 23 and 25-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Looney* in view of U.S. Patent o. 5,745,879 issued to Wyman (*Wyman*).

IV. STATUS OF AMENDMENTS

In response to the Final Office Action mailed February 25, 2002, rejecting claims 1-8, 10-18 and 20-30, Applicants hereby submitted After Final Response. A copy of all claims is attached hereto as Appendix A as a courtesy to the Examiner.

V. SUMMARY OF THE INVENTION

The present invention provides one or more license management devices that manage licenses for playback of digital content. The license management devices create licenses having an associated cardinality that determines the number of playback devices that can be authorized by the license. The license is stored in a set of playback devices, where the number of playback devices in the set is less than or equal to the cardinality of the license. In one embodiment, the license management device causes the license to be stored in the set of playback devices by using one or more digitally signed and/or encrypted commands. See Specification at page 5, lines 13-20.

The license is also included in digital content that the license authorizes for
playback. In one embodiment, the license management device causes the license to be
included in the digital content; however, content providers or other authorized agents can
also cause the license to be included in the digital content. Playback devices that have a
license that matches a license included in the digital content are authorized to play the
digital content. In one embodiment a single license can be used to provide authorization
to play digital content from multiple sources and/or multiple types of content. See
Specification at page 5, line 21 to page 6, line 1.

Playback devices can store multiple licenses, which allows playback devices to belong to multiple sets of playback devices authorized to playback various digital content. In one embodiment digital content files can contain multiple licenses to allow the content files to be shared by multiple sets of playback devices. In other words, a content file can be shared by different sets of users because the content contains multiple licenses. See Specification at page 6, lines 1-9.

In one embodiment, a server is coupled to multiple playback devices, including hardware playback devices and players (e.g., software applications running on a computer system), by a network. Any number of hardware playback devices and players can be coupled to servers by a network. See Specification at page 7, lines 1-5. One or more servers operate as a license management device, which creates licenses and determines the cardinality of the licenses created. The license management device communicates with the playback devices and/or players via a network. See Specification at page 11, lines 10-18 and Figure 5.

Licenses created by the license management device can be communicated to content providers. The content providers, in turn, embed a copy of the license into digital content to be provided to the playback devices and/or players. See page 11, lines 19-24. In one embodiment, a license comprises a 32-bit group identifier. See page 12, lines 16-17. When a player or playback device receives digital content, the player or playback device checks to determine whether the license (e.g., a 32-bit group identifier) stored in the content matches the license (e.g., a 32-bit group identifier) stored by the player or playback device. If the licenses match, the player or playback device is authorized for playback. See Specification at page 12, lines 3-7. The playback device or player can

receive digital content via a network connection with a digital information service or other provider. See Specification at page 8, lines 15-19 and Figure 2.

Each player or playback device can store multiple licenses and license can be added or subtracted according to various techniques. See Specification at page 13 and Figure 6. The cardinality of each license can be any value including, but not limited to, a fixed number, a variable number, or an unlimited number. See Specification at page 14, lines 14-16.

VI. ISSUES PRESENTED

1. Whether claims 1-8, 10-18 and 20-30 contain subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

2. Whether claims 1-8, 10-18 and 20-30 contain subject matter that was not described in such a way as to reasonably convey to one skill in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

3. Whether claims 1-8, 10-18 and 20-30 are clearly anticipated by U.S. Patent No. 5,969,283 issued to Looney, et al. (*Looney*).

4. Whether 3, 13, 23 and 25-27 are unpatentable over *Looney* in view of U.S. Patent No. 5,745,879 issue to Wayman (*Wayman*).

VII. GROUPING OF CLAIMS

For purposes of this response:

Claims 1, 2, 4-8, 10-12, 14-18, 20-22, 24 and 28-30 comprise Claim Group I.

Claims 3, 13, 23 and 25-27 comprise Claim Group II.

VIII. ARGUMENTS

A. REJECTION OF CLAIMS 1-8, 10-18 and 20-30 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH AS CONTAINING SUBJECT MATTER THAT WAS NOT DESCRIBED IN THE SPECIFICATION IN SUCH A WAY AS TO ENABLE ONE SKILLED IN THE ART TO MAKE AND/OR USE THE INVENTION IS IMPROPER BECAUSE THE SPECIFICATION DESCRIBES DEVICES THAT CREATE, DISTRIBUTE AND USE LICENSES HAVING VARIOUS CARDINALITIES AS WELL AS EMBODIMENTS OF THE LICENSES.

Claim Groups I and II

In the Final Office Action mailed February 25, 2002, claims 1-8, 10-18 and 20-30 were rejected under 35 U.S.C. § 112, first paragraph as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Applicants respectfully submit that the claims of Claim Groups I and II are supported by an enabling description in the specification as originally filed.

Specifically, the Final Office Action states:

Claims 1, 11, 21 and 24, failed to teach how the cardinality is implemented. The specification does not teach how the license determines the number of playback devices the license can be used to authorize the playback.

See page 3, comment 6. The Final Office Action further states:

The disclosure teaches that every playback devices [sic] that have the license stored are authorized to playback the digital content, whether they belong to a set of playback devices or not.

See page 4, comment 6 (continued from page 2). *Applicants submit that this is not an accurate characterization of the specification.* Dependent claims 2-8, 10, 12-18, 20, 22, 23 and 25-30 were rejected as being dependent on rejected independent claims.

The playback devices that store a particular license (e.g., a 32-bit number/identifier) define the set of playback devices authorized to playback associated content. Playback devices can belong to multiple groups by storing multiple licenses. Applicants submit that the specification does teach at least one implementation technique for managing the cardinality of a license. For example, the specification states:

License management device 510 enforces the cardinality restrictions of the licenses created. In one embodiment, license management device 510 causes licenses to be stored by playback devices by issuing one or more commands to the playback devices to which the licenses are targeted. ... Alternately, license management device 510 can communicate the creation of a license to an appropriate content provider that, in turn, includes the license in digital content.

See page 12, lines 8-15.

Thus, in one embodiment, a license management device enforces the cardinality of a particular license. Because the distribution of licenses is controlled by a “central” device, the number of playback devices that store a particular license can be limited to the cardinality of the license. This can be accomplished, for example, by having a counter associated with each license. Note that the license has an *associated* cardinality. See Summary of the Invention. Thus, the license (e.g., 32-bit number) itself is not the cardinality, but a cardinality is associated with the license. The cardinality is used to determine the number of licenses that are made available to be stored in playback device.

Thus, for example, when a license is caused to be stored in a playback device, the counter is incremented/decremented until the maximum number of licenses are distributed. Applicants submit that one of ordinary skill in the art would be able to implement this or another architecture for enforcing cardinality restrictions related to a license without undue experimentation.

Claims 2-8, 10, 12-18, 20, 22, 23 and 25-30 depend from one of the independent claims discussed above. Based at least on the arguments set forth above, that the independent claims are clearly enabled, Applicants submit that dependent claims 2-8, 10, 12-18, 20, 22, 23 and 25-30 are similarly enabled.

For at least the foregoing reasons Applicants submit that the subject matter of claims 1-8, 10-18 and 20-30 is supported by an enabling description in the originally filed specification. Applicants therefore request that the rejection of claims 1-8, 10-18 and 20-30 under 35 U.S.C. § 112, first paragraph be withdrawn.

B. REJECTION OF CLAIMS 1-8, 10-18 and 20-30 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH AS CONTAINING SUBJECT MATTER THAT WAS NOT DESCRIBED IN THE SPECIFICATION IN SUCH A WAY AS TO CONVEY TO ONE SKILLED IN THE ART THAT THE INVENTORS, AT THE TIME THE APPLICATION WAS FILED, HAD POSSESSION OF THE CLAIMED INVENTION BECAUSE MULTIPLE FIGURES AND THE ASSOCIATED DESCRIPTION CLEARLY DESCRIBE VARIOUS COMPONENTS INTERACTING VIA NETWORK CONNECTIONS

Claim Groups I and II

In the Final Office Action mailed February 25, 2002, claims 1-8, 10-18 and 20-30 were rejected under 35 U.S.C. § 112, first paragraph as containing subject matter that was not described in the specification in such a way as to convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants respectfully submit that the claims of Claim Groups I and II are supported by an enabling description in the specification as originally filed.

The Final Office Action states:

Claims 1, 3, 11, 13, 21, 23 and 24, cite “transmitting, via a network connection the first license to a first set of playback devices”. However the specification does not disclose the license being transmitted via the network. The management device causing the license to be stored in the playback devices and the management devices issues a command to the playback devices is not the same as and does not provide clear support for transmitting via a network connection to licenses to the playback devices. As a result, the claim contain [sic] subject matter which were [sic] not described in the specification in such a way as to reasonably convey to one skilled in the art that applicant had possession of the claimed invention.

See Final Office Action mailed February 25, 2002 at pages 5-6, comment 11 (emphasis in original).

Included for the Examiner’s convenience is a reproduction of Figure 5, as originally filed.

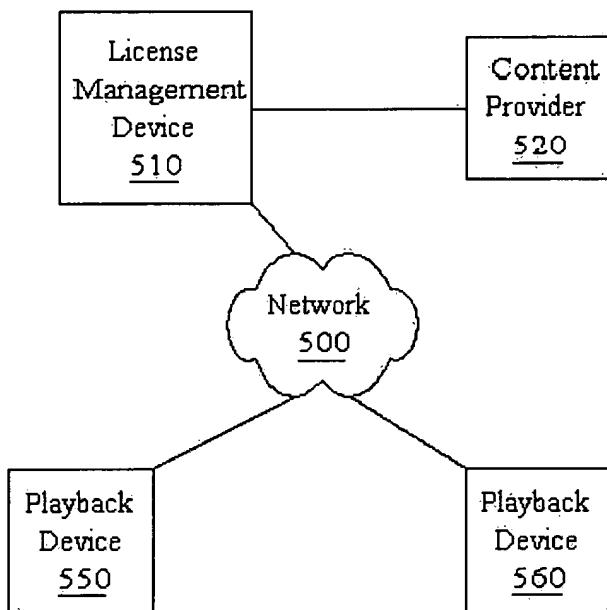


Figure 5 as originally filed.

Applicants submit that one of ordinary skill in the art, in connection with viewing Figure 5 showing a license management device coupled to a playback device via a network, and reading about such concepts as the license management device causing the license to be stored in a playback device and the license management device distributing

licenses, would conclude that these tasks can be accomplished via a network transmission. Network communications are well-known to those of ordinary skill in the art. The transmission of a license over a network is thus clearly communicated in the application as originally filed.

Because of the nature of the claim rejections under 35 U.S.C. § 112, first paragraph in response to any amendment made, Applicants are left to suspect that the Examiner is merely attempting to prejudice the Applicants by delaying the prosecution.

For at least the foregoing reasons Applicants submit that the subject matter of claims 1-8, 10-18 and 20-30 is supported by an enabling description in the originally filed specification. Applicants therefore request that the rejection of claims 1-8, 10-18 and 20-30 under 35 U.S.C. § 112, first paragraph be withdrawn.

C. REJECTION OF CLAIMS 1-8, 10-18 and 20-30 UNDER 35 U.S.C. § 102(e) AS BEING ANTICIPATED BY U.S. PATENT NO. 5,969,283 ISSUED TO LOONEY, ET AL. (LOONEY) IS IMPROPER BECAUSE LOONEY FAILS TO DISCLOSE CREATION AND STORING OF A LICENSE WITH AN ASSOCIATED CARDINALITY

Claim Group I

In the Final Office Action mailed February 25, 2002, claims 1-8, 10-18 and 20-30 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Looney*. For at least the reasons set forth below, Applicants submit that claims 1-8, 10-18 and 20-30 are not anticipated by *Looney*.

As a preliminary matter, the Final Office Action mailed February 25, 2002, with respect to the rejection of claims 3, 13, 23 and 25-27 under 35 U.S.C. § 103(a) states that

“Looney does not specifically disclose at least one playback device belonging to a second set.” See page 9, comment 26. Applicants agree with this assertion. Therefore, *b1K* Applicants submit that claims 3, 13, 23 and 25-27 should have been excluded from the rejection of claims as being anticipated by *Looney*.

Claim 1 recites the following:

creating a first license having a first cardinality, wherein the cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by a license management device;

storing the first license in a first set of playback devices in response to a command from the license management device, wherein the first set of playback devices is less than or equal to the first cardinality;

storing the first license in first digital audio content; and authorizing playback of the first digital audio content with the first set of playback devices.

Thus, Applicants claim creating and storing a license that is used to authorize playback of digital audio content. Claims 11, 21 and 24 similarly recite creation and storing of licenses in a set of playback devices.

Looney discloses a music organizer. See Abstract. The playback devices of *Looney* have a pre-loaded serial number. The serial number is loaded at the time of manufacture. See col. 6, lines 13-14. Even if the serial number is used to authorize playback of music, the serial number is not stored by a playback device in response to a license management device. Furthermore, *the serial number as disclosed by Looney does not have an associated cardinality* that is determined by the license management device.

The Final Office Action asserts that:

Looney implies that one playback device is authorized to playback the content. Therefore teaches [sic] that the license indicates the number of playback device [sic] that is [sic] authorized to playback the content.

See Final Office Action mailed February 25, 2002 at page 7, comment 15. As stated above, the license or identifier is not the cardinality. Therefore, the license concept of *Looney* does not imply the cardinality as claimed. Therefore, *Looney* does not anticipate the invention as claimed in claims 1, 11, 21 and 24.

Claims 2-8 depend from claim 1. Claims 12-18 and 20 depend from claim 11. Claims 22 and 23 depend from claim 21. Claims 25-30 depend from claim 24. Because dependent claims include the limitations of the claims from which they depend, Applicants submit that claims 2-8, 12-18, 22, 23 and 25-30 are not anticipated by *Looney* for at least the reasons set forth above.

For at least the foregoing reasons Applicants submit that claims 1-8, 10-18 and 20-30 are not anticipated by *Looney*. Applicants therefore request that the rejection of claims 1-8, 10-18 and 20-30 under 35 U.S.C. § 102(e) be withdrawn.

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D. REJECTION OF CLAIMS 1-8, 10-18 and 20-30 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER *LOONEY* IN VIEW OF U.S. PATENT NO. 5,745,879 ISSUED TO *WYMAN* (*WYMAN*) IS IMPROPER BECAUSE COMBINATION OF *LOONEY* AND *WYMAN* FAILS TO DISCLOSE OR SUGGEST AUTHORIZATION OF MULTIPLE DEVICES TO PLAY DIGITAL CONTENT BASED ON LICENSES WITH AN ASSOCIATED CARDINALITY

Claim Group II

In the Final Office Action mailed February 25, 2002, claims 3, 13, 23 and 25-27 were rejected under 35 U.S.C. § 103(a) as being anticipated by *Looney* in view of *Wyman*.

For at least the reasons set forth below, Applicants submit that claims 3, 13, 23 and 25-27 are not rendered obvious by *Looney* and *Wyman*.

Claim 3 depends from claim 1. Claim 13 depends from claim 11. Claim 23 depends from claim 21. Claims 25-27 depend from claim 24. As discussed above, *Looney* does not teach or suggest the invention in claims 1, 3, 11, 13, 21, 23 and 24-30. *Wyman* is cited to teach different nodes belonging to different accounts. Whether or not *Wyman* discloses different nodes belonging to different accounts, *Wyman* does not cure the deficiencies of *Looney*. Therefore, no combination of *Looney* and *Wyman* teaches or suggests the invention as claimed in claims 3, 13, 23 and 25-27.

For at least the foregoing reasons Applicants submit that claims 3, 13, 23 and 25-27 are not anticipated by *Looney*. Applicants therefore request that the rejection of claims 3, 13, 23 and 25-27 under 35 U.S.C. § 103(a) be withdrawn.

IX. CONCLUSION

Applicants respectfully submit that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

Please charge any shortages and credit any overcharges to our Deposit Account
No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: July 10, 2003

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7/10/03
Date

APPENDIX A: CLAIMS AS THEY CURRENTLY STAND

1. (Four Times Amended) A method comprising:
 - creating a first license having a first cardinality, wherein the cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by a license management device;
 - transmitting, via a network connection, the first license to a first set of playback devices, wherein the first set of playback devices is less than or equal to the first cardinality;
 - storing the first license in the first set of playback devices in response to a command from the license management device;
 - storing the first license in first digital audio content; and
 - authorizing playback of the first digital audio content with the first set of playback devices.
2. (Amended) The method of claim 1 further comprising:
 - storing the first license in second digital audio content; and
 - authorizing playback of the second digital audio content with the first set of playback devices.
3. (Twice Amended) The method of claim 1 further comprising:
 - creating a second license having a second cardinality, the license created by the license management device;

transmitting, via a network connection, the second license to a second set of playback devices, wherein the second set of playback devices is determined based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;

storing the second license in the second set of playback device in response to one or more commands from the license management device;

storing the second license in second digital audio content;
authorizing playback of the second digital audio content with the second set of playback devices.

4. (Original) The method of claim 1 wherein the cardinality is fixed.
5. (Original) The method of claim 1 wherein the cardinality is variable.
6. (Original) The method of claim 1 wherein the cardinality is unlimited.
7. (Amended) The method of claim 1 wherein at least one of the first set of playback devices comprises at least one hardware playback device.
8. (Amended) The method of claim 1 wherein at least one of the first set of playback devices comprises at least one software player.

10. (Amended) The method of claim 1 wherein the first digital audio content further comprises video digital programming.

11. (Four Times Amended) A machine-readable medium having stored thereon sequences of instructions that when executed ^{by} one or more electronic systems to:

create a first license having a first cardinality, wherein the cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by a license management device;

transmit, via a network connection, the first license to a first set of playback devices, wherein the first set of playback devices is less than or equal to the first cardinality;

store the first license in the first set of playback devices in response to a command from the license management device;

store the first license in first digital audio content; and

authorize playback of the first digital audio content with the first set of playback devices.

12. (Amended) The machine-readable medium of claim 11 further comprising sequences of instructions that when executed cause the one or more electronic systems to:

store the first license in second digital audio content; and

authorize playback of the second digital audio content with the first set of playback devices.

13. (Twice Amended) The machine-readable medium of claim 11 further comprising sequences of instructions that when executed cause the one or more electronic systems to:

create a second license having a second cardinality, the license created by the license management device;

transmit, via a network connection, the second license to a second set of playback devices, wherein the second set of playback devices is determined based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;

store the second license in the second set of playback device in response to one or more commands from the license management device;

store the second license in second digital audio content;

authorize playback of the second digital audio content with the second set of playback devices.

14. (Original) The machine-readable medium of claim 11 wherein the cardinality is fixed.

15. (Original) The machine-readable medium of claim 11 wherein the cardinality is variable.

16. (Original) The machine-readable medium of claim 11 wherein the cardinality is unlimited.

17. (Amended) The machine-readable medium of claim 11 wherein at least one of the first set of playback devices comprises at least one hardware playback device.

18. (Amended) The machine-readable medium of claim 11 wherein at least one of the first set of playback devices comprises at least one software player.

20. (Amended) The machine-readable medium of claim 11 wherein the first digital audio content further comprises digital video programming.

21. (Three Times Amended) An apparatus for digital license management, the apparatus comprising:

means for creating a first license having a first cardinality, wherein the cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by a license management device;

means for transmitting, via a network connection, the first license to a first set of playback devices, wherein the first set of playback devices is less than or equal to the first cardinality;

means for storing the first license in the first set of playback devices in response to a command from the license management device;

means for storing the first license in first digital audio content; and

means for authorizing playback of the first digital audio content with the first set of playback devices.

22. (Amended) The apparatus of claim 21 further comprising:
means for storing the first license in second digital audio content; and
means for authorizing playback of the second digital audio content with the first
set of playback devices.

23. (Twice Amended) The apparatus of claim 21 further comprising:
means for creating a second license having a second cardinality, the license
created by the license management device;
means for transmitting, via a network connection, the second license to a second
set of playback devices, wherein the second set of playback devices is determined based,
at least in part, on the second cardinality, and further wherein at least one playback device
belongs to the first set and to the second set;
means for storing the second license in the second set of playback device in
response to one or more commands from the license management device;
means for storing the second license in second digital audio content;
means for authorizing playback of the second digital audio content with the
second set of playback devices.

24. (Twice Amended) A digital data signal embodied in a data
communications medium shared among a plurality of network devices to provide digital
audio programming, the digital data signal comprising license having a first cardinality,
wherein the cardinality indicates the number of playback devices that can be authorized

for playback of associated digital audio content, the license having been created by a license management device, wherein a set of playback devices receive the digital data signal in response to one or more commands issued by the license management device and authorize playback of digital audio data if the license included in the computer data signal matches at least one license stored in the digital audio data.

25. (Original) The digital data signal of claim 24 wherein the cardinality is fixed.

26. (Original) The digital data signal of claim 24 wherein the cardinality is variable.

27. (Original) The digital data signal of claim 24 wherein the cardinality is unlimited.

28. (Original) The digital data signal of claim 24 wherein at least one of the first set of playback devices is a hardware playback device.

29. (Original) The digital data signal of claim 24 wherein at least one of the first set of playback devices is a software player.

30. (Original) The digital data signal of claim 24 wherein the first digital audio content further comprises digital video programming.